

ORDINANCE NO. 04768

**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA**

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**AN ORDINANCE AMENDING CHAPTER 22.5 (SECOND UNIT ORDINANCE) OF
DIVISION VI, PART ONE (ZONING REGULATIONS) OF THE SAN MATEO COUNTY
ORDINANCE CODE**

SECTION 1. FINDINGS. The Board of Supervisors of San Mateo County (“County”) hereby finds and declares as follows:

WHEREAS, the County of San Mateo adopted an ordinance regulating the creation of second units in 1984, codified as Chapter 22.5 of the Zoning Regulations; and

WHEREAS, since that time, the legislature of the State of California has enacted statutes governing how local jurisdictions may regulate second units; and

WHEREAS, in September of 2016 the legislature adopted further amendments to Government Code section 65852.2, which require local ordinances to be consistent with State law in order to remain effective after January 1, 2017; and

WHEREAS, housing production in San Mateo County has lagged far behind the need for new housing, resulting in housing shortages and housing costs that are unaffordable for many County residents; and

WHEREAS, second units are a type of housing that is often cheaper to build, more affordable to occupy, more environmentally sustainable, and less impactful on

surrounding neighborhoods than other forms of housing; and

WHEREAS, the San Mateo County Board of Supervisors has recognized second units as a valuable source of new housing that can help meet the County's housing needs and goals; and

WHEREAS, Policy HE32 of the County's adopted Housing Element commits the County to update its second unit regulations in order to comply with State law, streamline permitting, standardize the County's regulations, and facilitate the development of second units; and

WHEREAS, the Board of Supervisors in March of 2015 directed the Planning and Building Department to prepare amendments to Chapter 22.5 to comply with State law; and

WHEREAS, the Board of Supervisors in March of 2015 further directed that amendments to Chapter 22.5 facilitate and promote the creation of new second units; and

WHEREAS, the proposed amendments are consistent with the County's Local Coastal Program; and

WHEREAS, the proposed amendments constitute an amendment to the Implementation Plan of the Local Coastal Program; and

WHEREAS, on adoption, the amendments will be submitted to the California Coastal Commission for review and certification; and

WHEREAS, the amendments to the Zoning Regulations, Chapter 22.5, will ensure that the County's second unit regulations are consistent with State law, will facilitate and promote the creation of second units, and will help fulfill the County's housing goals.

NOW, THEREFORE, the Board of Supervisors of the County of San Mateo, State of California, ordains as follows:

SECTION 2. The San Mateo County Ordinance Code, Division VI, Part One (Zoning Regulations), is hereby amended to replace Chapter 22.5 (Second Units), in its entirety, with the following:

CHAPTER 22.5. SECOND UNITS

SECTION 6425. PURPOSE. Second units are a residential use that provide an important source of housing. The purpose of this Chapter is to:

1. Increase the supply and diversity of the County's housing stock, in particular the number of smaller and more affordable units, by allowing second units to be built on existing residential properties, while preserving neighborhood character.
2. Increase the housing stock of existing neighborhoods in a manner that has less impact on the environment than development of housing in undeveloped areas.
3. Allow more efficient use of existing residential areas and supporting infrastructure.
4. Provide a means for residents to remain in their homes and neighborhoods.
5. Provide opportunities for homeowners to earn supplemental income from renting a second unit.
6. Establish standards for second units to ensure that they are safe, habitable, and compatible with existing development.

SECTION 6426. DEFINITIONS.

1. Primary Residence. A “primary residence” is the main residence located or proposed to be located on the parcel on which a second unit is located or proposed to be located.
2. Second Unit. A “second unit” is a dwelling unit located or proposed to be located on a lot which contains, or will contain, a primary residence. Second units may be detached from or attached to the primary residence on the property. Second units may also be (1) efficiency units, as defined in Section 17958.1 of the California Health & Safety Code, or (2) manufactured homes, as defined in Section 18007 of the California Health & Safety Code. Second units are “accessory dwelling units” as that term is used in Government Code Section 65852.2. Second units are not “accessory buildings” as defined in Section 6102.19. Any secondary structure that provides independent facilities for living, sleeping, eating, cooking, and sanitation shall be considered a second unit, unless an applicant can provide compelling evidence to the contrary, to the satisfaction of the Community Development Director.
3. Detached Second Unit. A “detached second unit” is a unit that is an independent structure, entirely separated from the structure of the primary residence.
4. Attached Second Unit. An “attached second unit” is a unit that is built as an addition to, extension of, or within the primary residence.
5. Floor Area. For purposes of this Chapter, the “floor area” of a primary residence or second unit is the area of each floor level included within the walls enclosing each dwelling unit. The floor area shall be measured from the outside face of the walls enclosing each dwelling unit including all closet space and storage areas contained within the unit, including habitable basements and attics, but shall not include unenclosed porches, balconies, or enclosed garages or carports.

SECTION 6427. LOCATIONS PERMITTED. Second units shall be allowed in the R-1, R-2, R-E, RH, RM and TPZ Districts outside the Coastal Zone and the R-1 District within the Coastal Zone.

SECTION 6428. APPROVAL. Second units meeting all of the requirements of Section 6429 shall be approved ministerially, without public notice, public hearing, or discretionary review.

Second units not meeting the standards set forth in Section 6429 will be considered a conditionally permitted use within the districts specified in Section 6427 and may be permitted by a conditional use permit pursuant to a public hearing before the Zoning Hearing Officer, as described in Section 6431.

SECTION 6429. DEVELOPMENT STANDARDS FOR NEW SECOND UNITS.

New second units shall be subject to the same requirements as any dwelling unit located on the same parcel in the same district, including but not limited to the requirements of Chapters 20 and 22 of the Zoning Regulations, with the following exceptions:

1. **MINIMUM LOT AREA.** Second units shall be exempt from the minimum lot area per dwelling unit provisions in the applicable district.
2. **MAXIMUM DENSITY OF DEVELOPMENT.** Second units shall be exempt from any and all provisions limiting the maximum density of development in the applicable district.
3. **SETBACKS.** Notwithstanding the required setbacks in the applicable district, minimum setbacks for second units shall be:
 - a. Detached second units of sixteen (16) feet or less in height:
Side Setback: Five (5) Feet
Rear Setback: Five (5) Feet
 - b. Detached second units greater than sixteen (16) feet in height:
Side Setback: Five (5) Feet
Rear Setback: Ten (10) Feet
 - c. Setbacks between attached second units and property lines. Attached second units shall be subject to the same setback requirements as a primary residence in the same district, except as described in 6429.14, below. Second units constructed entirely within an existing garage shall not be subject to setback requirements. Second units constructed above an existing garage, regardless of height, will be subject to the setbacks in 6429.3(a).
 - d. Setbacks between detached second units and property lines. The setbacks required between a detached second unit and any property lines shall be as specified in this Chapter. If different setbacks to property lines are required by any other section of the Zoning Regulations, those requirements shall be disregarded, and the standards of this Chapter shall govern.
 - e. Detached second units in front of primary residence. If any portion of a second unit is located in front of the primary residence, then the

front and side setbacks applicable to the second unit shall be those required of a primary residence in the same zoning district.

- f. Distance between detached second units and other buildings. The distance required between a detached second unit and any other building on the same parcel must be a minimum of five (5) feet, measured from foundation to foundation. If a separation distance greater than five (5) feet is required by any other section of the Zoning Regulations, it shall be disregarded, and the standards of this Chapter shall govern.
4. **FLOOR AREA.** The floor area of a detached second unit shall not exceed seven hundred fifty (750) square feet or thirty-five percent (35%) of the floor area of the existing or proposed primary residence, whichever is larger, up to a maximum of one thousand two hundred (1,200) square feet. The floor area of an attached second unit shall not exceed seven hundred fifty (750) square feet or fifty percent (50%) of the floor area of the existing or proposed primary residence, whichever is larger, up to a maximum of one thousand two hundred (1,200) square feet. The floor area of a second unit shall count against the total floor area allowed on a parcel, such that the total floor area of the second unit and the primary residence shall not exceed the maximum floor area allowed within the zoning district.
5. **HEIGHT.** The maximum height of the second unit shall be twenty-six (26) feet. Building height shall be measured as the vertical distance from any point on the lower of (a) finished grade, or (b) natural grade, to the topmost point of the building immediately above. Chimneys, pipes, mechanical equipment, antennae, and other similar structures may extend up to eight (8) feet beyond the building height, as required for safety or efficient operation. Second units built entirely within an existing building shall be subject to the height limit applicable to that building in the relevant district.
6. **BALCONIES AND DECKS.** Second units that do not meet the setback requirements that would apply to a primary residence in the same district shall have no rooftop decks, and no portion of any balcony or deck shall be located above ten (10) feet in height, measured in the same manner as height in Section 6429.5 except on the side of the second unit facing the primary residence. Second units that meet the setback requirements that would apply to a primary residence in the same district may have rooftop decks and balconies to the extent otherwise allowed in the relevant district.
7. **WINDOWS.** Second units that do not meet the setback requirements that would apply to a primary residence in the same district shall have no windows located above or extending above ten (10) feet on the second unit except on (1) the side(s) of the second unit facing the primary residence, and (2) the side(s) of the second unit that comply with the normal setback

requirements of the district. On the sides of the second unit that do not meet the normal setback requirements of the district, clerestory windows located above ten (10) feet on the second unit shall be allowed, if they have a lower sill height of no less than seven (7) feet from the nearest interior floor of the second unit, and a total window height no greater than twenty-four (24) inches. Skylights shall be allowed.

8. INGRESS AND EGRESS. Second units shall have an independently accessible entrance that does not require passage through the primary residence. For second units attached to the primary residence, any new entrances and exits shall face the side and rear of the parcel only.
9. PARKING. Second units meeting any of the following criteria shall not be required to provide any parking in addition to that already provided on the parcel, or in the case of a concurrent application for a new primary and second dwelling unit, that required for the primary unit only:
 - a. Second units located within one-half (1/2) mile of a public transit stop or station.
 - b. Second units located within a designated architecturally and historically significant historic district.
 - c. Second units that are part of the existing primary residence or an existing accessory structure.
 - d. Second units located within one (1) block of a car share vehicle pick-up/drop-off location.

For all other second units, the following parking standards shall apply:

One (1) new parking space, in addition to those already existing on the parcel, shall be provided on-site for each studio, one bedroom, and two bedroom second unit. Two (2) new parking spaces shall be provided on-site for each second unit with three or more bedrooms.

State law requires no more than one space per unit or bedroom; existing regulations require only “a minimum of one new parking space.” This provision establishes slightly more stringent requirements for units with more bedrooms, compared to the existing ordinance.

If the parking already existing on the parcel exceeds that required for existing development on the parcel, excess parking spaces shall be counted against the new parking required for the second unit. Parking spaces shall be provided in the following manner:

- a. Pervious Surfaces. All new parking spaces created for the second unit must be provided on pervious surfaces. The maximum amount of impervious surfaces designated to satisfy the second unit parking requirement shall be no greater than the amount of impervious surfaces existing at time of application.
 - b. Uncovered Parking. All parking required for the second unit may be uncovered.
 - c. Front or Side Yard Parking. Two (2) parking spaces may be provided in the front or side yard. Not more than 600 square feet of the front yard area shall be used for parking.
 - d. Tandem Parking. Required parking spaces for the primary residence and the second unit may be provided in tandem on a driveway. A tandem parking arrangement consists of one car behind the other. No more than three total cars in tandem may be counted toward meeting the parking requirement.
 - e. Compact Spaces. All parking required for the second unit may be provided by compact parking spaces, as defined in Section 6118.a.
 - f. Parking Exceptions. If the required parking for a second unit cannot be met in accordance with this Section, an application may be submitted for a parking exception, as specified in Section 6120.
10. DESIGN REVIEW. Second units shall not be subject to design review, except to the extent that they are located in the County's Coastal Zone, and are subject to design review requirements incorporated in the County's Local Coastal Program.
 11. CONCURRENT APPLICATION FOR DEVELOPMENT OF PRIMARY RESIDENCE AND SECOND UNIT. In the case of a concurrent application for development of a new primary residence and new second unit on the same parcel, whichever unit is first issued a certificate of occupancy must conform to all applicable regulations for the primary residence in the relevant district.
 12. CONVERSION OF EXISTING RESIDENCE. An existing residence may be converted to a second unit in conjunction with development of a new primary residence, if the existing residence, once converted, will meet all the standards applicable to development of a new second unit described in this Chapter.

13. CONVERSION OF ACCESSORY BUILDING. A second unit may be constructed within or above an existing, detached accessory building provided the resulting unit conforms to all applicable provisions of this Chapter.
14. CREATION OF SECOND UNIT ENTIRELY WITHIN A NONCONFORMING PRIMARY RESIDENCE. In the case of an existing primary residence that does not conform to one or more zoning regulations, creation of a second unit that will be entirely within the existing primary residence shall not, in itself, create a requirement that the nonconformities be rectified. However, no other provisions that may require rectification of existing nonconformities are waived merely due to approval of a second unit, unless specifically described in this Chapter.

SECTION 6430. DEVELOPMENT STANDARDS FOR EXISTING SECOND DWELLING UNITS.

1. Building permits may be issued for existing second units which were constructed without required permits, under the following conditions:
 - a. The second unit conforms to all applicable provisions of this Chapter, and all other applicable required standards for habitability.
 - b. All applicable fees for construction completed without permits have been paid.

Second units constructed without permits that do not meet the provisions of this Section may apply for a conditional use permit, as described in Section 6431.

SECTION 6431. REQUIREMENTS FOR CONDITIONALLY PERMITTED SECOND UNITS.

Second units not meeting all applicable standards of this Chapter may be conditionally permitted, subject to a conditional use permit. The process for application for and issuance of a conditional use permit for a second unit shall be that set forth in Section 6503 of the County Zoning Regulations, except that the granting of the permit shall be at the determination of the Zoning Hearing Officer. The determination of the Zoning Hearing Officer shall be appealable to the County Planning Commission, as specified in Chapter 30 of the Zoning Regulations. Second units requiring a conditional use permit which are within the CD District shall require a Coastal Development Permit that is appealable to the Coastal Commission.

In the case of second units meeting all applicable standards of this Chapter except those related to parking requirements, a parking exception may be

requested as provided in Section 6429.9(f), and a conditional use permit shall not be required.

SECTION 6432. COASTAL DEVELOPMENT DISTRICT.

In the CD District, all second units shall comply with all of the applicable regulations of the district, including but not limited to the Sensitive Habitats, Visual Resources, and Hazards policies of the Local Coastal Program. Nothing in this Chapter shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act, the San Mateo County Local Coastal Program, or the CD District regulations, except that no public hearing shall be required for second units that meet all relevant standards of this Chapter, and approval of such second unit applications shall be made at the staff level. Second units shall count toward the total residential development quotas described in Section 1.23 of the County's Local Coastal Program.

SECTION 6433. DECISIONS.

Applications for second units, except for those requiring a conditional use permit as specified in Section 6431, shall be approved or denied ministerially, on the basis of the objective criteria included in this Chapter and other applicable regulations as defined in Section 6434. Consideration of other permits associated with development of the proposed second unit only, that might otherwise be discretionary, including but not limited to Tree Removal, Coastal Development, Resource Management, Use Permits and Variances, shall also be ministerial, except as provided in Section 6431. No public notice or public hearing shall be required for review and approval or denial of a second unit, unless an applicant requests exceptions to the standards set forth in this Chapter.

SECTION 6433. APPEALS.

Decisions to approve or deny an application for a second unit that meets all relevant standards set forth in this Chapter are not subject to appeal, except if located in the Coastal Commission appeals area of the CD District, in which case the decision may be appealed as provided in the CD District Regulations, Section 6328.3(s).

SECTION 6434. APPLICABILITY OF COUNTY REGULATIONS.

With the exception of specific standards and exemptions described in this Chapter, all second units must comply with all applicable provisions in the San Mateo County Ordinance Code, including the Zoning Regulations (Section 6100 et seq.) and Building Code (Section 9000 et seq.).

SECTION 2. Adoption of this Ordinance is found to be exempt from environmental review, per the California Environmental Quality Act (CEQA) Section 21080.17 and CEQA Guidelines Section 15282(h), which state that adoption of ordinances relating to second units (accessory dwelling units) to implement specific Government Code sections (Sections 65852.1 and 65852.2) is exempt from CEQA.

SECTION 3. The Clerk shall publish this Ordinance in accordance with applicable law.

SECTION 4. This Ordinance shall be effective thirty (30) days from the passage date thereof, except in the County's Coastal Zone, where it shall be effective immediately upon certification by the California Coastal Commission.

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